

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ROBERT R. BOGARD

APPELLANT,

**v.
STATE OF MISSOURI**

RESPONDENT.

DOCKET NUMBER WD73451

DATE: January 17, 2012

Appeal From:

Livingston County Circuit Court
The Honorable Daniel L. Chadwick, Judge

Appellate Judges:

Division Three: James M. Smart, Jr., Presiding Judge, James E. Welsh, Judge and Gary D. Witt, Judge

Attorneys:

Kent Denzel, Columbia, MO, for appellant.

Shaun J. Mackelprang and Jayne T. Woods, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ROBERT R. BOGARD,

APPELLANT,

v.

STATE OF MISSOURI,

RESPONDENT.

No. WD73451

Livingston County

Before Division Three: James M. Smart, Jr., Presiding Judge, James E. Welsh, Judge and Gary D. Witt, Judge

Robert Bogard pled guilty to the charge of distribution of a controlled substance near a school, a class A felony, pursuant to an agreement with the State that resulted in Bogard receiving probation on a suspended execution of sentence. After revocation of his probation, Bogard filed a post-conviction motion claiming that his attorney "refuse[d] to call his wife [and] State witness up for examination, never raised any facts I asked him to do." The motion court denied Bogard's motion for post-conviction relief without an evidentiary hearing. Bogard now appeals.

AFFIRMED

Division Three holds:

First we must address the State's claim that Bogard waived his claim because his post-conviction motion was filed out of time. The State failed to raise this issue at the proceeding below and it is, therefore, waived on appeal. We will proceed to the merits.

Bogard's point on appeal, generously construed, is that his attorney failed to investigate and call witnesses on his behalf. By pleading guilty, Bogard waives any claim of ineffective assistance other than the voluntariness and understanding with which the movant made his plea. He does not claim his plea was involuntary nor that he did not understand its terms. Further, Bogard's claim that his counsel was ineffective is conclusively refuted by the record where multiple times he stated satisfaction with his attorney's performance and failed to relay to the trial court at multiple opportunities his alleged dissatisfaction. Further, Bogard failed to allege that he was in any way prejudiced by his attorney's alleged ineffective assistance. This is also fatal to his claim.

The point is denied.

Opinion by Gary D. Witt, Judge

January 17, 2012

This summary is UNOFFICIAL and should not be quoted or cited.